
Court of Washington
County of _____

Plaintiff

vs.

Defendant

No.

**Motion and Declaration
for Order Vacating Conviction
(MTAF)**

I. Motion

Defendant asks the court for an order vacating defendant's conviction(s) of misdemeanor or gross misdemeanor offenses. This motion is based on RCW 9.96.060 or the Laws of 2021, ch. 237, the case record and files, and the declaration of defendant.

Dated: _____

Defendant/Defendant's Attorney, WSBA #

Print Name

II. Declaration of Defendant

I, (name) _____, state as follows:

1. On (date) _____ I was convicted of the following offense(s):

Count No: ____ Offense: _____

Count No: ____ Offense: _____

Count No: ____ Offense: _____

2. ☐ **Conviction as Victim.** The offense for which I was convicted was a misdemeanor or gross misdemeanor, and the conviction was a result of being a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, and all the following are true:

- I am providing to the sentencing court or the sentencing court's successor, my statement of the specific facts and circumstances below that prove by a

preponderance of the evidence that the offense was committed as a result of being a victim of one of the above offenses:

[] See attached.

- I have no criminal charges pending in any court of this or another state, or in any federal court for any crime other than prostitution;
- The offense for which I was convicted was a misdemeanor, and I have not been convicted of a new crime in this state, another state, or tribal court in the 3 years prior to date of the filing of this motion.
- I have provided proof that the crime victim penalty assessment (RCW 7.68.035) has been paid in full, except where the conviction being vacated is for the crime of prostitution, prostitution loitering, or stay out of the area of prostitution.
- Restitution owed to any victim, excluding restitution owed to any insurance provider under Title 48 RCW, has been paid in full.
- The offense was not any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9A.44 RCW (sex offense), except for failure to register as a sex offender under RCW 9A.44.132.
- The offense was not a conviction as described in RCW 46.61.5055.
- The offense was not patronizing a prostitute as described in RCW 9A.88.110.

3. **Excluded Offenses:** I understand that unless I was convicted as a victim as described in Section 2, I cannot vacate a conviction for the following offenses.
RCW 9.96.060(2)(c)-(e)):

- A violation of chapter 9A.44 RCW (sex offenses), except for failure to register as a sex offender under RCW 9A.44.132.
- A violation of chapter 9.68 RCW (obscenity and pornography).
- A violation of chapter 9.68A RCW (sexual exploitation of children).
- A violent offense as defined in RCW 9.94A.030, or an attempt to commit a violent offense.
- Driving while under the influence ("DUI") (RCW 46.61.502).
- Actual physical control while under the influence (RCW 46.61.504).
- Operating a railroad, etc. while intoxicated (RCW 9.91.020).

4. [] **Prior Offense:** The offense for which I was convicted is considered a "prior offense" under RCW 46.61.5055 (see below), and all of the following are true:

- The prior offense is not a DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504). RCW 9.96.060(2)(d).
- I have not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application.
RCW 9.96.060(2)(h).

- At least 3 years have passed since I completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(g).
- I have not had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense. RCW 9.96.060(2)(d).
- More than 10 years have passed since the date of the arrest for the prior offense. RCW 9.96.060(2)(d).
- There are no criminal charges pending against me in any court of this state or another state, or in any federal or tribal court as of the date I file this motion. RCW 9.96.060(2)(b).
- I am not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. I was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

A “prior offense” means (RCW 46.61.5055(14)):

Original Convictions, including equivalent local ordinances, for:

- Driving Under the Influence (DUI) (RCW 46.61.502) or an equivalent out-of-state conviction.
- Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504) or an equivalent out-of-state conviction.
- Commercial Vehicle DUI/Physical Control (RCW 46.25.110).
- Watercraft DUI (RCW 79A.60.040(2)).
- Aircraft DUI (RCW 47.68.220).
- Nonhighway vehicle DUI (RCW 46.09.470(2)).
- Snowmobile DUI (RCW 46.10.490(2)).

Amended Convictions:

- **Originally charged with** DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522); **but convicted of** Negligent Driving 1st (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), or Reckless Endangerment (RCW 9A.36.050) or an equivalent local ordinance. This section also applies for equivalent out-of-state convictions.
- **Originally charged with** Watercraft DUI (RCW 79A.60.040(2)) or an equivalent local ordinance, **but convicted of** Operating a Watercraft in a reckless manner (RCW 79A.60.040(1)) or an equivalent local ordinance.
- **Originally charged with** Aircraft DUI (RCW 47.68.220) or an equivalent local ordinance, **but convicted of** Operating an Aircraft in a careless or reckless manner (RCW 47.68.220) or an equivalent local ordinance.

Deferred Prosecution Granted for:

- Driving Under the Influence (DUI) (RCW 46.61.502), including local and out-of-state equivalents.
- Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504), including local and out-of-state equivalents.
- Negligent Driving 1st (RCW 46.61.5249) or equivalent local ordinance if the charge under which the deferred prosecution was granted was originally filed as a violation of DUI (RCW 46.61.502) or (Physical Control) (RCW 46.61.504), or an

equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522).

- An equivalent out-of-state deferred prosecution for DUI or Physical Control, including a substance use disorder treatment program. (RCW 46.61.5055(14)(a)(xvi)).

Deferred Sentences for:

Originally charged with DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522); but deferred sentence was imposed for Negligent Driving 1st (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050), or an equivalent local ordinance.

5. [] **Domestic Violence:** The offense for which I was convicted involves domestic violence and I have complied with the following conditions (RCW 9.96.060(2)(f)) and all the following are true:

- I provided the prosecuting attorney's office that prosecuted the offense with written notice of this motion. RCW 9.96.060(2)(f)(i).
- I filed the original notice with this court. RCW 9.96.060(2)(f)(i).
- I have not been convicted of 2 or more domestic violence offenses stemming from different incidents. RCW 9.96.060(2)(f)(ii).
- I have never signed an affidavit under penalty of perjury affirming that I have not previously had a conviction for a domestic violence offense, and a criminal history check reveals that I have had such a conviction, RCW 9.96.060(2)(f)(iii);
- It has been at least 5 years since I completed the terms and conditions of the sentence, including restitution/legal financial obligations and successful completion of any treatment ordered. RCW 9.96.060(2)(f)(iv).
- I have not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application. RCW 9.96.060(2)(h).
- There are no criminal charges pending against me in any court of this state or another state, or in any federal or tribal court as of the date I file this motion. RCW 9.96.060(2)(b).
- I am not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. I was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

6. [] **Offenses not otherwise specified above,** and all the following are true:

- At least 3 years have passed since I completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(g).
- I have not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application. RCW 9.96.060(2)(h).
- There are no criminal charges pending against me in any court of this state or another state, or in any federal or tribal court as of the date I file this motion. RCW 9.96.060(2)(b).
- I am not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order

which restrains one party from contacting the other party. I was not previously restrained by such an order and found to have committed one or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

I declare under penalty of perjury under the laws of the state of Washington that the foregoing and any attachments are, to the best of my knowledge, true and correct.

Signed on *(date)* _____,

at *(city or county)* _____, Washington.

Defendant

Mailing Address, unless confidential